

University of Oklahoma College of Law University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

8-28-1852

Report : Mr. Hale

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

S. Rep. No. 354, 32nd Cong., 1st Sess. (1852)

This Senate Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

IN THE SENATE OF THE UNITED STATES.

August 28, 1852.—Ordered to be printed.

Mr. HALE made the following

REPORT:

[To accompany bill S. No. 551.]

The Committee on Private Land Claims, to whom was referred the petition of the legal representatives of James Clamorgan, deceased, late of Missouri, praying the confirmation of a grant of land made to said Clamorgan by the Spanish authorities, prior to the transfer of Upper Louisiana to France, and from France to the United States, have had the same under consideration, and beg leave to submit the following report :

That it appears, from the petition, that this claim is to a certain tract of land lying and being in the counties of St. Charles and Lincoln, in the State of Missouri, and is set forth as described in the grant, as follows, to wit: bounded on the east by the Mississippi river, running from a point sixty arpens north of the mouth of the river Cuiver to a point sixty arpens south of the mouth of the river Dardenne, on the bank of the Mississippi river; on the north and south by two parallel lines drawn due west from each of said points, and extending two hundred arpens beyond the foot of the first bluffs; and on the west by a line connecting the two extreme points; the superficial contents of which have not been precisely ascertained, but is represented to contain about five hundred thousand arpens.

This is purely a legal and equitable claim, arising under the laws and customs of the Spanish government in relation to their land systems in their colonial possessions, and the obligations of this government arising under the treaty of cession to respect them. The claim is too large to appeal to sympathy, however meritorious the petitioners may be, and must stand or fall upon its clear legal and equitable merits. It is in this view your committee have examined it, and now proceed to submit the result of their investigations.

This claim is founded upon a *concession* made of said tract of land, in pursuance of a petition specially describing it as above set forth, only more specific, by Don Zenon Trudeau, lieutenant governor of Upper Louisiana, to Don Santiago Jaques Clamorgan, and his heirs, for a *valuable consideration*, and subsequently approved by the Baron de Carondelet, governor general of Louisiana, as appears by the petition, concession, and correspondence in document A, appended to this report, and submitted as a part of it. The concession bears date March 3, 1797, and the acknowledgment of the receipt of the approval of the

Baron de Carondelet, July 3, 1797; all of which appears in document A, above referred to, being copies from the recorder's office of St. Louis, and printed in Senate Document No. 16, first session of the 24th Congress.

It appears that this claim was duly and properly laid before the first board of commissioners created under the act of Congress to examine and report upon claims in Upper Louisiana, and was, in 1811, passed upon and disposed of by the following dictum, unaccompanied by any reason whatever: "It is the opinion of the board that this claim ought not to be confirmed." It was again laid before the board created by the act of 1832, and in 1833 met with a like fate, for the assigned reason that they (the board) did believe that it was disregarded by Trudeau, the grantor, and Delassus, his successor in office; a reason founded upon no assigned fact, that your committee can perceive, and must rest solely upon vague speculation, arising out of conflicting claims upon the same locality, in the absence of an actual survey to designate it.

That some grants were located, both before and after the Clamorgan grant, within its prescribed limits, is very true; but your committee are slow to believe that that circumstance alone, in view of the facts of the case, sustains the conclusion of the board, that this claim was disregarded. This grant was not surveyed, and, by the very terms of the grant itself, was not required to be surveyed, "until the occupations of the surveyor general would permit" the survey to be made; hence it could not be ascertained whether these subsequent grants were within the limits or not. The very form and manner of making the conflicting donation grants, as shown in the report of the commissioners, is an argument against the assumption that the officers granting them intended to disregard the prior grant of Clamorgan, founded, as it certainly was, upon a *bona fide* consideration. These petitions for donations of land were in their very nature vague and indefinite, generally asking for a grant of land in some specified section of country on which to make a farm, &c., &c. The concession in response concedes them the land asked for, and directs the surveyor to put the party in possession of the same, provided the land belonged to the King's domain, and did not interfere with others. This was the usual form, and demonstrates upon its face that the lieutenant governor could know nothing of such conflicts, and consequently could not have intended to disregard a prior grant, founded upon a *valuable consideration*. And the surveyor general himself could not have known when he came in conflict with this claim, as it had not been surveyed, and by the very terms of the grant was not required to be surveyed until a future time; which future never came to Clamorgan, as the change of government to some extent defeated it; for your committee cannot shut their eyes to the historical fact, that almost from the time of the consummation of this grant, until the final settlement of the title to Louisiana in this country, the government of it was in the almost constant process of change—first from Spain to France, and from France to the United States—greatly embarrassing claimants in perfecting their titles by surveys. That as soon as the United States purchased it, they, by an act of Congress of March 26th, 1804, prohibited, under severe penalties,

all surveys, all taking possession of claimed lands, all marking of trees or designating of lines, &c.; thereby putting an absolute check upon the process of maturing inchoate titles. The want of a survey, and the conflicts growing out of it, should work no injury to the grantee, where it was deferred for convenience by the government granting, and absolutely prohibited by the government succeeding to the possession.

But a survey was not absolutely necessary to the validity of a grant, as your committee conceive is well established by the Supreme Court. The only object of a survey is to ascertain the land; and if this is ascertained by the grant, referring to such objects as are natural boundaries and imperishable monuments, it is better established than could be done by any artificial lines. "The grant itself," say the Supreme Court, "is contained in the one word *granted*, which must be referred to everything prayed for in the petition." (10 Peters, 332.) "It has also been distinctly decided," say the same court, in the Florida cases, "that the land claimed must have been severed from the general domain of the King by some grant which gives it locality in its terms by reference to some description, or by a vague general grant, with an authority to locate afterwards, by a survey making it definite." (10 Peters, 331.) Again, the same court say, "that where the grant was specific, a survey might be made after the time fixed by the treaty; and where the grant was vague, or contained an authority to locate, which was executed by a survey made before, it was valid." That is, where the grant was specific—that is, within a specified locality, calling for objects of boundary which were permanent or imperishable—a survey was not necessary to give it validity, because the specific character of the grant severed it completely from the King's domain; but where it was vague and uncertain, it had to be made certain by a survey. This is the clear distinction made by the court, and is more fully illustrated in the case of the heirs of Arredondo *et al.*, in 13 Peters, 134, where this whole doctrine was brought into requisition. That was a case for thirty thousand arpens of land in Florida; was an inchoate grant, and without a survey; and they confirm it upon the ground of its being a specific grant. Now, your committee will contrast this with the Clamorgan case, which has equal merits in every other position, as they believe it has also in this. The description is taken from the decision of the court itself, where they say: "But this concession calls for a natural object—a creek—and is designated as beginning on the creek, about seven miles west of an Indian town called Alligator town. A survey may then be made so as to give the appellees the benefit of the concession, according to the description in the petition, supposing that Alligator creek exists, and Alligator town can be found." This is a case confirmed on the special ground of a specific location, a survey not being necessary to its validity.

Now, your committee would contrast the specific character of the Clamorgan grant, not only specified in the petition but in the grant, and in the approval of the grant by Baron Carondelet. In the petition of Clamorgan, this tract or tracts of land are described as follows: He asks for a "grant on the western side of the river Mississippi, some leagues above the mouth of the Missouri; the tract of land bounded on one side by the little river called Lacharette, *alias* Dardenne, and on the other by the little river called Au Cuiver: one on the south, the other

on the north, will serve as boundaries to those two sides. The petitioner wishes, moreover, that you would be pleased to grant to him sixty arpens of land in front on the banks of the Mississippi, immediately adjoining the mouth of the first above-named river, Lacharette, in descending the current of the Mississippi; and again, sixty arpens in front, also on the banks of the Mississippi, adjoining immediately to the upper side of the mouth of the second above-named river, Au Cuiver, and ascending the current of the Mississippi. The depth of the three different above-described tracts of land to be extended by two lines, starting from the banks of the Mississippi—one from the most southern, the other from the most northern point (of the front) of the above demanded tracts; which two lines shall be run parallel on each side in a westerly direction, until they reach the top of the high hills in the rear; and from there the said two lines to be continued and prolonged, in the same westerly direction, until they reach a point at the distance of about two hundred arpens from the foot of said hills; and then those two extreme points shall be connected together by a straight line, which shall be run so as to form the fourth side of the said three tracts here above demanded. The said lines encompassing in their extent all the waters of the above-mentioned rivers Lacharette, *alias* Dardenne, and Au Cuiver," &c. The Baron De Carondelet, in his approval, abbreviates the description, but retains every essential point, as follows: He speaks of it as "the tract of land situated between the two rivers Charette and Cuiver, both emptying into the Mississippi; also sixty arpens to the north and sixty arpens to the south of said rivers, which serve to determine the situation of said land, having the Mississippi in front. Two parallel lines are to be drawn, running in the interior of the country, until they reach at the distance of two hundred arpens beyond the foot of the first hills, conformably to the solicitation of the party," &c.

The essential points in the specific description in the Arredondo case are Alligator creek and Alligatortown, and only one point given—the commencement on the creek, seven miles from the town, a town so insignificant that doubts seem to be expressed about finding it. In the other case we have the Mississippi river as the front or base line on the east; we have the Dardenne and Cuiver rivers north and south in the tract; we have the first hills or Mississippi bluffs on the west: a combination of imperishable and unchangeable monuments of boundary, rarely to be found in any grant. Besides, in the Arredondo grant no lines are given: it is merely to begin on Alligator creek, near Alligatortown; in this case all the lines connecting the natural and imperishable objects are defined specifically. The rule in the former case was, that it was specific enough to allow a survey to be made, so as to give the parties the benefit of their concession. If it was so in the former, how much more so is it in the latter case, where every natural boundary still stands, and every line can be run upon the distinct description amongst them, both in course and distance. The grant, then, being specific, no survey was requisite to its validity; and this disposes of the chief objection of the board of commissioners. The court dispose of their other objection in the same case, to wit: that prior grants within a specific grant does not invalidate the specific grant, but only subjects it to the loss of the land holding such priority in point of time.

But suppose the lieutenant governor did attempt (of which we find no evidence) to disregard this grant, and, in the arbitrary spirit of the government he represented, sought to gratify whims by making and unmaking titles; where was his power to do so? Whence did he derive his authority? Spain was a government of laws, and in her land systems for her colonial possessions had a fixed and definite code. He had power to grant by the laws and regulations, and they were his guide; but where did he derive the power to disregard a grant once made, upon a valuable consideration, and destroy a vested right once established? We know of none—even if the facts in the case warranted such an inference, which we conceive they do not. The first board of commissioners acted more wisely; feeling the same laudable anxiety to protect the settlers on this grant, and knowing of no sufficient reasons, founded in evidence, for the opinion, they disposed of it by a mere dictum.

But even the last board of commissioners who rejected it, in their report to the Commissioner of the General Land Office, hold towards it the following strong language in support of its authenticity and validity:

“The board take this occasion to say, that the concession to Clamorgan, and the accompanying documents which have been presented to them, give no evidence of being surreptitious, and they feel fully convinced that it was the intention of the government of the country to make the claimant compensation for his expenditures in maintaining a military force to protect the trade on the Missouri; but it is evident from subsequent acts of the same officer who made the grant, and his successors, that there must have been some further procedure in relation to the claim, which has not been brought to light before any of the tribunals of the government appointed for the adjustment of land titles; and it is further evidenced by the acts of the surveyor general of Upper Louisiana, (an officer known to be punctilious in the discharge of his duty,) that he never could have been notified by Clamorgan of his grant, or the surveys under his jurisdiction, subsequent to the date of this grant, would not have been permitted, and the lieutenant governor would have been notified by the surveyor of the interference of Clamorgan's grant—of the seven claims previously granted and surveyed. These circumstances induce the board to believe that the claimant abandoned his claim with the knowledge of the officers, to seek remuneration otherwise, or has been guilty of a neglect of his privileges under the grant, which would amount to a forfeiture. The board, therefore, could not recommend this claim for confirmation, believing that, had the government of Spain been continued over this country to this day, the tract, as designated, would not be confirmed to the claimants; but it is more than probable, that if the remuneration had not been made, which seems was intended by this grant, a location might be permitted in some part of the domain where it would not be prejudicial to others.”

This argument does not strike your committee as sound. The premises are that the grant was genuine, “not surreptitious;” that it was made for a valuable consideration, in payment of a crown debt, both for services rendered and money advanced to maintain the military possession of the country; and the deductions are, that as people

have gotten on the land with some interfering donation grants, and the surveyor, who never surveyed this grant, surveyed them, they, the board, must suppose that "some procedure in relation to this claim, which has not been brought to light," must have taken place to vitiate it. And again, though they, the board, "feel fully convinced that it was the intention of the government of the country to make the claimant (through this grant) compensation for his expenditures in maintaining a military force to protect the trade of the Missouri," yet "they could not recommend this claim for confirmation," because they believed, "had the Spanish government continued, it would not have confirmed it, as designated," but "would have probably remunerated the claimant by a location on some other part of the public domain, where it would not be prejudicial to others." In short, the board find the grant and all the documents *genuine*; that it was made for a *valuable consideration*; that it was given as a compensation for services and money advanced for the government to maintain her military possession of the country and protect the trade of the Missouri; that the Spanish government, had it continued, would only, in their opinion, have confirmed it in a different location, "where it would not be prejudicial to others;" therefore they think it should not be confirmed at all, because there might be something "which has not been brought to light;" showing that it was subsequently disregarded by the officers of the crown, or abandoned by the grantee. Of the former they pretend to no evidence. Indeed, they say there is none, when they base their inference upon some undefinable fact which may have existed, but nothing of which has ever "been brought to light." But a complete answer to such an inference is the fact that the officers of the crown could not repudiate their grant by an affected disregard of it. Their powers were to make, not unmake, titles. And they could no more repudiate a grant founded upon a *valuable* and *executed consideration*, than they could their own deed after receiving and spending the purchase-money. And the grantee, instead of manifesting any act of abandonment, seems, from the whole history of this case, to have pursued it with the most unremitting industry during his lifetime, and his representatives, since his death, have followed it up with equal energy. Under the first act of Congress, in 1804, directing notice and registry of these claims, there is no pretence that it is not noticed and registered. Under the first and second boards of commissioners appointed to adjust these claims it is prosecuted with energy and perseverance. Indeed, such seems to have been the vigilance of these claimants, in enforcing their rights, that Congress, to protect the actual settlers on the land, have had specifically to close the doors of the courts to this claim by the same act that opened them to all others. Since then they have been repeatedly before Congress, first to rescind the *proviso* restraining the court from giving them a hearing; and now, seeming to abandon all hope of interfering with settlers so long protected, they are here for a confirmation, to be satisfied with an equal quantity of wild land. There is little in all this to indicate any disposition to abandonment.

But your committee are of opinion that every particle of evidence in this case, documentary or otherwise, and every fair and legitimate

inference, repudiates the idea that this claim was ever abandoned by the grantee, or disregarded by the Spanish authorities; but, on the contrary, that they all tend to establish the fact that it was regarded by the officers as a fair and legitimate claim, founded on a *valuable consideration*, both in money advanced for the crown of Spain and in meritorious and hazardous services performed in exploring the Missouri river, and conciliating the Indians along its borders. Besides, it was granted before the treaty of cession was ever dreamed of, either from Spain to France, or from France to the United States, and must have been regarded a valid claim, protected by the treaty of cession, equal in merits to others in Upper Louisiana.

The petition sets forth that they, "the petitioners, believing this claim to be one of a peculiarly meritorious character, but singularly unfortunate, beg leave to submit it at length, and challenge judicial investigation upon its merits. Its size, which constitutes no valid objection before a proper forum, seems to be its only demerit. Had the courts been opened to this, as to other claims, by the several acts of Congress passed for their adjudication, they alone would have been troubled with its investigation. But its rejection by a mere dictum of the first board opened its area to the settlers who entered much of the land, and fearing its singular merits before the courts, resisted every means of having it adjudicated; and with the government it became a matter of public policy to suppress the conflicts at law which its confirmation would lead to, and therefore closed the doors of justice upon it by express provisions of law. To avoid such anticipated conflicts, and to secure for the claim a fair and impartial investigation, they now ask that it may be confirmed; and instead of confirming it to its proper location, and to secure and quiet the settlers in their titles, that they give them in lieu of it scrip, to be located on any public lands, subject to private entry, and in such quantities as may be deemed proper."

As this claim originated in services rendered and money advanced by the grantee for the crown of Spain, and is alleged to have been given as a remuneration for such services and money, your committee deem it proper to take a short review of the transactions preceding the grant, before they come to apply what they believe to be the established principles of law and equity to it. For the documents see appendix A, before referred to.

Clamorgan's petition to the lieutenant governor and sub-delegate, Don Zenon Trudeau, bears date March 1st, 1797, and very specifically recites the services and sacrifices made by him to the Spanish government: services which consisted in arduous voyages of discovery in the then unknown regions of the west, and in the establishment of military positions and forts, and in raising and equipping of troops, and in the regulation and government of the Indian nations, and the exclusion from those nations of British interlopers from the Northwest and Hudson's Bay Companies, in sacrifices which consisted of great personal hardships and privations and vast pecuniary losses. The petition also recites, that to enable them to prosecute these enterprises, and keep up the military establishments, as authorized by the King of Spain, a sum of ten thousand dollars per annum for ten years was appropriated or allowed by the Spanish government of Louisiana; but, in conse-

quence of some official objections started by Indendant General Morales, no part of this sum was ever paid, and the petitioner was thereby subjected to great pecuniary losses. By way of indemnity for these losses, and as a recompense for those services, the grant was prayed for. The concession acknowledges the correctness of the facts stated, and grants the tract as before described; and orders that the surveyor of the province shall, "as soon as his occupation shall permit him," make a survey of the same, conforming to the boundaries described in the petition, in order that the concession and survey shall be presented to the governor general for his approbation."

That approbation appears to have been subsequently given; for in a letter of Don Zenon Trudeau, lieutenant governor, &c., to Clamorgan, dated July 3d, 1797, he tells him, Clamorgan, that he had received an official letter from the Baron de Carondelet, governor general, in which he uses the following language in relation to this grant: "*I have received your official letter of the 11th of March last past, in which you state to me the motives that have induced you to grant to Don Santiago Clamorgan the tract of land (here the land is again described as in the petition,) such as you tell me that it has been asked for by the party interested; all which has my approbation, because Clamorgan has deserved this favor of the government.*" "The which," says Trudeau, "I communicate to you for your convenience and government."

Many other letters, official and unofficial, from the Baron de Carondelet to Clamorgan, preceding this, will be found in appendix A, as also one from Intendant General Morales; the whole tendency of which is to confirm and abundantly establish the truth of the statements of services and sacrifices in Clamorgan's petition to Trudeau, and that the assent of Trudeau to the statements was correct. The letter of Intendant General Morales shows that Clamorgan's claims were acknowledged and not paid when the grant was made, which was to be a final satisfaction of them.

Besides these letters, there are two certificates, signed, &c., before a justice of the peace of St. Louis county, in December, 1818—one by one Charles Sanguinet, and the other by James Mackay, both old inhabitants of St. Louis at the time, and since dead. For these, see appendix B to this report.

These certificates sustain, with singular accuracy, the facts and details set forth in the petition of Clamorgan to Trudeau. Mr. James Mackay, after going over the details of raising troops, spending money, &c., proceeds to state that it was understood that the grant on the Cuiver and Dardenne was made by way of reward for the services of Clamorgan, and to indemnify him for said losses and disbursements.

On comparing this claim with others arising under the Spanish authority, and which have in most instances been confirmed, it will be found to possess peculiar merits in several points: First. This grant is founded on a valid executed consideration. Second. It had the distinct approval of the governor general. And third. The recitals in the petition, showing extraordinary merits, are all proved and sustained in the clearest possible manner, not only by the concession of Lieut. Gov. Trudeau, but by affidavits and letters, cotemporaneous with the transactions, from the highest official dignitaries of the land. In nearly

every other case they are gratuitous grants, given with a view to population or agriculture, or both, and entirely prospective as respects any services or utility to the government granting, from the persons receiving the grant. Scarcely any can be found even of the confirmed claims where a valuable consideration had been paid to the crown of Spain; scarcely one where services so great have been the moving cause to the grant; scarcely one where the specific approbation of the original or inchoate title has been made by the governor general, as in this case. In a large number of cases confirmed by the commissioners, especially in the larger claims, there is no evidence that the grantee even saw the land granted and confirmed to him. In none scarcely is the claim pretended to be founded on passed services, or an executed consideration of a pecuniary character. And yet even the Supreme Court held them valid, where they were fortunate enough to get before that tribunal, whose duty is to execute the laws and the treaties, regardless of consequences. And the principles applied by that court for their rule of government in all cases of the kind, sustain this claim with singular force. In 10th Peters, page 330, the court say: "It was never doubted by this court that property of every description in Louisiana was protected by the law of nations, the terms of the treaty, and the acts of Congress; nor that in the term *property*, was comprehended every species of title, inchoate or perfect, embracing those rights which lie in contracts, those which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed." And again on the next page, in the same case, they lay down the following rule as to the officers empowered to grant. They say: "In all our adjudications on either class of cases, we have considered the term *lawful authorities* to refer to local governors, intendants, or their deputies." In conformity to these rules, and the rule relating to specific grants requiring no survey, this claim, your committee believe, must have been confirmed if ever submitted to that tribunal. That it was not, seems not to have been the fault of the claimants.

Your committee would now invite attention to some of the decisions of that court upon similar claims, and the doctrines and principles laid down as applicable to this case, as illustrative of what would have been the probable decision of that tribunal in this case if it had been before it, premising that, in point of *merits and consideration*, the cases cited are not superior to the present.

In the Arredondo case the Supreme Court confirmed the claim as obligatory under the treaty of cession of Florida, which only contains a similar protective stipulation in favor of individual rights of private property as the treaty ceding Louisiana. In that case the claim, like the present claim, was large, being for three hundred and forty-two thousand two hundred and fifty arpens. It was a gratuitous grant to Arredondo and his heirs, coupled with a condition of his establishing on the tract two hundred families within the term of three years from the date of the grant, *which condition was never performed*, under the alleged excuse of the cession of Florida to the United States by the treaty of 1819. The only particular in which the Arredondo grant had any advantage of the Clamorgan grant was one of form merely, it having been

signed by the intendant general and his secretary, and to that extent consummated. In every other particular, looking to matters of substantial law and equity, this grant your committee believe to be more meritorious. In that case the consideration moving to the grant was prospective, and never performed nor attempted to be performed; in this case the consideration was of both *services and money*, and both had passed before the grant. In that case there was a condition, not performed; in this case there was no condition, as the land had been paid for before the grant. In this case, although the grant was not formally completed, by the actual signature of the governor general to the instrument, it was substantially confirmed by him, as appears by his letter to Lieut. Governor Trudeau approving the grant, and reiterating the obligations of the government which induced it. The reason why the grant was not issued *pro forma* at the date of the Baron Carondelet's letter approving it, was doubtless because no survey had been made to ascertain the precise quantity contained within the defined limits; and the survey was only required to be made by the granting officer, "when his, the surveyor general's, occupation would permit." And as the survey under such an order was likely to be delayed, the letter of Carondelet was doubtless written to give Clamorgan the highest assurance that the grant *was approved*, his services and claims on the government recognised, and in due time would be perfected. Your committee entertain no doubt that a complete title would have been made at the time of Carondelet's approval, or at any subsequent time during the Spanish dominion there, had the case been prepared for it. That it was not applied for, may be attributed in part to the order of the lieutenant governor allowing the survey to be made at convenience, and partly to the expense of such a proceeding when money was scarce, and when it was dangerous and difficult in that country to make surveys; but more, perhaps, to the belief then general in the province, that such a *title required no additional form to give it validity*—a view now sustained by the court. (See 10th Peters, 331.) Yet upon every principle of equity it was an equally meritorious case as that of Arredondo, which the Supreme Court confirmed.

Another case confirmed by the Supreme Court was that of Peheman, on the river St. John's, in Florida. That was a grant purporting to have been made as a reward for military services. It was an inchoate grant only, not even calling for a specific location, and never was surveyed prior to the treaty of cession. It was made by the lieutenant governor or commandant at St. Augustine, and was not, as in the present case, afterwards specially approved by the superior authority. Again: it so happened in the Peheman case, that the royal order referred to and invoked by the petition, as authorizing the grant prayed for, will be found, and was in fact admitted by the court, not specifically to authorize a grant of such quantity of land or to such a person as the petitioner described himself. Yet, notwithstanding all this, the Supreme Court presumed—a legitimate presumption—that the officer having power to grant, and who undertook to make the grant as a reward for the military services recited, *had legal authority to make it*, and confirmed the claim accordingly. "Power in the officer and fraud

in the party constitute the only issues in such a controversy," say the court.

In this, the Clamorgan case, there is no argument against the grant, as in Perekman's case, furnished in the petition itself. The petition, on the contrary, presents an all-powerful claim in services, disbursements, damages, &c., which it recites, and all of which are fully proved by admissions of the highest officers, and by extrinsic evidence of a respectable character. It will further be found that all the rules and principles laid down by the Supreme Court, in their decisions in the above cases, sustain clearly the claim of Clamorgan. It will be found, by reference to the rules and principles established by the Supreme Court, that this is necessarily, in their own language, that sort of claim "which would have been confirmed according to the laws, usages, and customs of the Spanish government, and the practice of the Spanish authorities under it at New Orleans, if the government under which the claim originated had continued in Missouri." The following extracts from the opinions of the Supreme Court, in the case of Arredondo, show most conclusively what would be their decision in this case, if it had been allowed to have been submitted to their adjudication: "The laws of Spain and its colonies are the will of the King, expressed by way of royal ordinance or decree of council, *or the act of an authorized officer; it then becomes, as to the persons or matters to which it relates, the law of the kingdom.*" Here, then, in this grant to Clamorgan, is the *act of an authorized officer*. Nothing is more beyond the reach of controversy than the proposition that the lieutenant governor and sub-delegate of Upper Louisiana, and the governor general of Louisiana, were, on the 3d of March, 1797, authorized to grant lands of the royal domain in any quantity, and to whomsoever, and for whatever consideration, consistently with their allegiance, they might think proper.

The Intendant General in Florida certainly had no greater power to grant the King's domain in 1817 than the governor general, Baron de Carondelet, had to grant the lands in question in 1797. If the governor general was authorized to grant, it follows, as a matter of course, that his approbation of the grant by the lieutenant governor must have been equally authorized; and therefore the act of the lieutenant governor was *the act of an authorized officer*; and therefore, according to the above doctrine of the Supreme Court, good and legal, "and, as to the person and the subject-matter to which it relates, the law of the kingdom." Again: the Supreme Court lay it down that "the only questions that can arise between an individual claiming a right under an act done and the public, or any individual denying its validity, *are, power in the officer and fraud in the party.*"

It has been shown, your committee conceive, that the question of *power in the officer* to make such a grant must be decided in favor of the grantee in this case; and as to the question of fraud, it is not only not shown by any proof, a thing to be proved, but the very suspicion is repelled by the whole history of the case. Even the commissioners who decided against the confirmation, bear testimony to the genuine character of the documents. It is a sound legal principle, sustained by the Supreme Court in the following language, that "fraud is not to be *presumed*, but ought to be proved by the party who alleges it; and if

the motive and design of an act was to be traced to an honest source, equally as to a corrupt one, the former ought to be preferred." The fair application of these principles, your committee believe, will effectually protect this claim from all danger of mere gratuitous imputations.

Your committee have adverted to the approval by the governor general, to demonstrate the legality of the grant made by the lieutenant governor to Clamorgan, although they did not deem this absolutely necessary, because, as the court say in the above cited opinions, "*the public acts of a public officer, purporting to be exercised in an official capacity, and by public authority, shall not be presumed to be by usurpation, but by a legitimate authority previously given or subsequently ratified, which is equivalent.*" A contrary doctrine to this would be destructive of all private rights in a ceded dominion, and render the article in the treaty protecting them a mere nullity; as it would reduce each claimant to the necessity of maintaining by proof the official character and authority of an officer, where the means of proof were wholly beyond his reach. Then the act of Trudeau, even without the express approval of the governor general, must be taken to have been by a legitimate authority, and the subsequent ratification only confirms it beyond all doubt or controversy. The authority of the granting officer, and the absence of even a suspicion of fraud, being established in this case, it is difficult to conceive what well-founded objection can exist against the claim. It is a grant for a consideration—an absolute sale. There is no condition, express or implied, annexed to the grant, the breach of which could have the effect of defeating it by its non-performance. No specific time was ordered for the survey, the actual occupation, or cultivation of the land. All this was, in terms, left to depend on the will of the grantee, and the convenience of the officer whose duty it was to make the survey. Besides, after the 26th of March, 1804, a survey was prohibited, also occupation and cultivation, even the marking of a tree, under severe penalties, by the act of Congress of that date. It, then, does not become the government to object to the claim for the non-performance of an act, which act it forbid to be performed. It is equally clear that, on the 3d of April, 1803, the date of the treaty of cession, no forfeiture had or could have taken place, by reason of the non-performance of any condition or act. Nor had any taken place on the 10th of March, 1804, the day on which the government of the United States, *de facto et de jure*, commenced in Upper Louisiana. It need not be demonstrated that no forfeiture could have taken place between the 10th of March and the 26th of March, 1804. The regulations of O'Riley, Gayoso, and Morales, if they ever had any effect in Upper Louisiana, which it is alleged they had not, requiring cultivation and occupation of lands gratuitously conceded, never were intended, anywhere, to apply to lands granted for a *valuable consideration paid, or as a reward for services rendered to the crown.* Such grants were passed and executed contracts, which even the King of Spain could not infringe without an *illegal*, despotic, and arbitrary invasion of the rights of his subjects. Land so granted for a passed consideration, without any condition annexed, could no more be forfeited for the want of a survey or cultivation, than could a man's money be taken from him because he did not make the most advantageous use of it. Besides, no survey

could be made, or possession and cultivation established, after the 26th of March, 1804.

Your committee have not deemed it necessary to cite or advert to the Spanish laws or ordinances, for the purpose of showing the power of the officer to make such a grant, or to demonstrate that such a grant was not only permitted, but enjoined by their laws and ordinances to be made, when such a case as that of Clamorgan should present itself. Your committee believe that the doctrines and principles established in the cases above referred to, render any argument on the Spanish laws, ordinances, usages, or customs, wholly superfluous.

From the first law on the subject, passed in 1542, by the Emperor Charles the Fifth, (which law was incorporated into the Recopilacion of the usages of the Indies in the year 1682,) down to the ordinance of 1798, transferring the power of granting lands from the governor general to the intendant general, is found the powers and duties of the viceroys, presidents, governors general, and sub-delegates, to grant land as a reward for services, and for purposes of settlement and cultivation, imparted and prescribed so repeatedly, and in such precise and emphatic terms, as can leave no doubt on the subject. And when with these laws and ordinances are combined the uniform customs and usages of the government in her colonies, and particularly in Louisiana, the power of Trudeau and Carondelet to make the grant in question assumes the character of a mathematical truth.

Your committee have thus endeavored fairly to lay open this whole claim, in all its bearings, and in such a manner as to make it easily understood, and invoke for it such a consideration as its merits demand. They have shown it was a grant based on a *valuable consideration*—that it was made and approved by *competent authority*—that it was certainly good under the laws, customs, and usages of Spain, and as such was protected by the treaty of cession—that, being for an executed consideration, no forfeiture could have worked under the Spanish dominion on account of neglect or delay in the grantee; and none under the United States, as one of its first acts was to prohibit all action on the part of the claimant—that there never was the slightest imputation of fraud upon the grant; and that it was brought, in every particular, within the principles uniformly laid down by the Supreme Court in similar cases; and that it is no fault of the grantee, that that tribunal has not been invoked upon its merits.

The petitioners very properly say, in their petition, that, "in presenting a claim to the consideration of Congress of this magnitude, they feel that they have no right, nor do they desire, to ask anything on the grounds of favor; but that they, in common with every citizen, have a right to invoke the judgment of your honorable bodies upon their legal and equitable claims, and in the name of justice demand that they receive a fair and impartial hearing, and a decision upon their rights under the law."

And, in their prayer, they further state that, "by a mere *dictum* of the first board of commissioners, this claim was thrown back, until the lands embraced within its limits were chiefly occupied with settlers—when the government was induced from mere policy to protect the occupants, and close a door to endless litigation, to preclude it from the

courts, which had been opened generally and liberally to claimants. But those reasons for smothering it under considerations of policy no longer exist, as the petitioners are willing to abandon their true location, secure the occupants in their titles, and only ask for a confirmation to be located on other wild lands subject to entry, in such quantities as you (the Congress) may deem just."

Which prayer of the petitioners, your committee, upon a full and fair examination of the case, and for the reasons already submitted in this report, are of opinion ought to be in justice granted; and, in conformity to this opinion, herewith report a bill, and ask that the same may be passed.

A.

Jacques Clamorgan, claiming 500,000 arpens, to Don Zenon Trudeau, governor of Upper Louisiana.

Nothing has made the petitioner so proud as the encouragement and emulation you have given to his industry, for the purpose of accomplishing the discovery of the Indian nations extending themselves to the Pacific ocean. The petitioner being charged with that mission by the general government, you condescended to give him hopes that he would have the honor of your protection and support. You did more: you solicited from the general government the aid claimed by the petitioner, in order to proceed with vigor in an enterprise of which his Majesty himself appeared to be occupied. In fact, his Majesty granted to the petitioner an exclusive privilege for trading ten whole years with the nations of Upper Missouri, not only in order to open a new branch of commerce in furs, but also to get information about, and topographical knowledge of, the immense territory which was to be explored. Those objects could not be attained but by making great sacrifices among the Indian nations, in order to conciliate to us their esteem and friendship. In consequence of your recommendations, sir, his excellency the Baron de Carondelet laid before his Majesty an account of the excessive expenses to which the petitioner had been subjected in this arduous enterprise of facilitating communications then so extensive.

His Majesty, in his goodness, determined, in favor of the petitioner, that a sum of ten thousand dollars should be paid annually to him, in order to contribute to the expenses occasioned by the discovery of the nations and territories of Upper Missouri, as also in keeping away foreigners, who, from Hudson's bay and Lake Superior, transported their goods, in order to bribe the credulous nations inhabiting the said Upper Missouri.

His excellency the Baron de Carondelet, as well as you, sir, communicated immediately, by official letters to the petitioner, the generosity of his Majesty in his favor; but it had not its intended effect, on account of the impediments thrown in the way by the Intendant Morales, who pretended at the time to have in the King's coffers no funds appropriated to that object! In consequence of that state of contra-

diction between the two powers, the petitioner has remained a victim of his zeal and activity in rendering himself useful, in compliance to the wishes of the general government, and to the intentions of his Majesty. In these unfortunate circumstances the petitioner presumes to claim of your goodness that you will be pleased to grant to him, on the western side of the river Mississippi, some leagues above the mouth of the Missouri, the tract of land bounded on one side by the little river called Lacharette, *alias* Dardenne, and on the other by the little river called Au Cuivre: one on the south, the other on the north, will serve as boundaries to those two sides. The petitioner wishes, moreover, that you would be pleased to grant to him sixty arpens of land in front, on the banks of the Mississippi, immediately adjoining the mouth of the first above-named river Lacharette, in descending the current of the Mississippi; and again, sixty arpens in front, also on the banks of the Mississippi, adjoining immediately to the upper side of the mouth of the second above-named river, Au Cuivre, and ascending the current of the Mississippi. The depth of the three different above-described tracts of land to be extended by two lines, starting from the banks of the Mississippi, one from the southern and the other from the most northern point (of the front) of the above-demanded tracts; which two lines shall be run parallel on each side, in a westerly direction, until they reach the top of the high hills in the rear; and from there, the said two lines to be continued and prolonged in the same westerly direction, until they reach a point at the distance of about two hundred arpens from the foot of said hills; and then those two extreme points shall be connected together by a straight line, which shall be run so as to form the fourth side of the said three tracts here above demanded. The said lines encompassing in their extent all the waters of the above-mentioned rivers, Lacharette, *alias* Dardenne, and Au Cuivre, in order that, hereafter, the petitioner may erect saw and grist mills thereon, also place there a number of cattle, have slaughter-houses, and send salt meat to the capital. And the petitioner shall render thanks to your goodness.

J. CLAMORGAN.

DON ZENON TRUDEAU, *Capt. in the regiment of Louisiana,*
Lt. Col. by brevet, and Lt. Governor Western part of Illinois.

ST. LOUIS, March 1, 1797.

ST. LOUIS, March 3, 1797.

Cognizance being taken of the statement made by Don Santiago Clamorgan, and the governor general, the Baron de Carondelet, having particularly recommended to me to facilitate and protect the discovery and commerce of Upper Missouri, in which the above-named Clamorgan has engaged at my entreaties; considering the losses which said enterprise has occasioned to him, and the new expenses to which he shall have to contribute on account of the same undertaking, and how important it is to favor and extend the discoveries herebefore mentioned, without prejudice to the royal treasury, and to the interest and welfare of these settlements; but, on the contrary, in contributing to

their prosperity, by drawing new inhabitants; for these considerations, and on account of the said Clamorgan having rendered himself worthy and deserving of the favors of the government, the surveyor of this jurisdiction (as soon as the occupations of his place will permit) shall survey, in favor of the party interested, the extent of land he solicits, in the way and manner described in the foregoing document, which, together with the plat and certificate of survey, and of the boundaries which shall be set (to said land,) will form the title of concession which, in due time, he shall have to lay before the general government of the province, in order to get its approbation and record.

ZENON TRUDEAU.

—
ST. LOUIS, *August* 16, 1834.

Truly translated from record-book D, pages 314 and 315.

JULIUS D. MUNN, T. B. C.

—
No. 1.

NEW ORLEANS, *May* 26, 1794.

I have read, sir, with much interest, the memorial you have addressed to me. It contains political views which do honor to your understanding, and are in accordance with the ideas I have laid before the court two years ago. We are, perhaps, very near the moment when we shall see them realized; but time and pains are needed to convince the ministers of their utility. The grand objects which, for the present, absorb all the attention of the different powers, will perhaps delay for some months the approbation of this plan; but I do not despair of seeing it adopted before the end of the year.

Some errors have crept in among your details, which the enthusiasm for what is good and too full conviction of your own ideas have hidden from you; but, in the main, they are just, and the means of execution well combined.

I have the honor to be, with the most perfect consideration, sir, your very humble and very obedient servant,

LE BARON DE CARONDELET.

MONS. CLAMORGAN.

—
No. 2.

NEW ORLEANS, *July* 22, 1794.

SIR: I have indeed received the political memorial you directed to me, under the double cover which you mention. The letter annexed to it, for Mr. Delassus, was also received at the same time, and suspecting some mistake, and also conjecturing what might be the contents of it, I threw it into the fire.

I have already had the honor to tell you my sentiments on one part of the contents of your memorial, which I have read with the greatest interest. Let us wait till the storm which agitates the political atmosphere be somewhat dissipated, and then we shall see what the future situation of Europe will permit us to do for the welfare of Louisiana, which I hope will advance more in the last five years of this century than it has done ever since the beginning of it, up to the period of my coming into the province.

Your views, sir, are in perfect accordance with mine. True wealth is to be found only in agriculture, and this requires a competent population and easy outlets. Louisiana is susceptible of all these advantages; but present circumstances are not favorable to our views. Let us, then, have patience for awhile, and by remaining attentive spectators of passing events, we may seize on the first opportunity of success.

I have the honor to be, with the most perfect consideration, sir, your very humble and very obedient servant,

LE BARON DE CARONDELET.

Mons. DE CLAMORGAN.

No. 3.

NEW ORLEANS, *May 11, 1796.*

SIR: In consequence of what you wrote to me in your letter of 10th April, I send to Mr. Trudeau some medals for the company, and among them a very fine gilt one, which I intend for the great Maha chief, in order to flatter him most. I also send several commissions, leaving a blank for the names, so that Mr. Trudeau may have them filled up; but it is to be wished, as much for the company as for the King, that there should be but one single chief decorated with a great medal, one with a small one, and two captains in each nation, for, hereafter, those chiefs will require compensations adequate to their grades. I send also five flags by Mr. Chouteau, and when, in execution of the treaty concluded with the United States, we shall abandon the Bluffs, the commandant will send to Mr. Trudeau ten swivels for the service of the company's forts.

Mr. Chouteau is also bearer of a commission, such as you desired for Mr. Mackay. Finally, I send to Mr. Trudeau the order that Mr. Todd may take an interest in the company of discoveries.

There is no objection to Mr. Todd having the exclusive trade of the Sac and Fox nations in the country east of the Missouri, and even on the said Missouri, during the term of his contract; but it would not be proper to have it extended to the western side before we positively know, and are perfectly acquainted with, the force and situation of the nations situated on the (last) above-mentioned side of said river. Besides, I must avoid to have those nations at variance with the Osages, whom Messrs. Chouteau are beginning to keep in subjection, and who will be an impediment to the aggrandizement of our settlements as long as we cannot keep them in peace.

I am concerned to see that our settlers of Upper Mississippi, who might acquire true wealth by agriculture, prefer to devote themselves to the fur trade, which is as dangerous as it is precarious. The working of the lead mines would also afford great profits, because we might furnish the Havana with this article, and yet we are constantly destitute of it for want of labor; at this moment there is none, either in the King's or in private warehouses.

I have the honor to be, with the most perfect consideration, sir, your very humble and very obedient servant,

LE BARON DE CARONDELET.

Mons. DE CLAMORGAN.

No. 4.

NEW ORLEANS, *July 9, 1796.*

SIR: I have received the account of Mr. Mackay's travel to the Maha nation; as also his instructions given to the party going to the discovery of the South Sea. I would be so much the more flattered should this last (expedition) succeed, as it is confidently reported that a Spanish squadron has sailed from Europe in order to go and dislodge the English from Nootka Sound; and it would be a curious fact if our people were to reach the same point at the same time.

I thought I had written to you that the establishment of a fort at the river St. Peter had already been proposed to the court, which is occupying itself of the means required to put Louisiana in a respectable state of defence; but time is needed, for everything remains to be done, and the political circumstances of Europe attract all the attention.

I have the honor to be, with the most perfect consideration, sir, your very humble and very obedient servant,

LE BARON DE CARONDELET.

Mons. DE CLAMORGAN.

ST. LOUIS, *August 26, 1834.*

The above four letters are truly translated from the original.

JULIUS DE MUN, T. B. C.

No. 5.

NEW ORLEANS, *September 18, 1796.*

SIR: I have just received the agreeable news of the approval of the "Spanish company formed in 1794, (these are the proper words of the royal decree made in the Council of State held on the 27th of last May,)" for the purpose of making discoveries to the westward of the Missouri, as also of the regulations and instructions under which your lordship has sanctioned and granted to the said company the exclusive privilege

of the fur trade with all the nations of Indians on said Missouri, who inhabit beyond the nation of Poncas, offering three thousand dollars as a reward to the first who will reach the South Sea.

2d. The permission granted to the said company to arm and maintain armed, in the forts which it has or may have hereafter, at the expense of his Majesty, the one hundred men who are thought to be necessary, the whole being under your lordship's orders, for the end designated, which you will watch with the greatest care, &c.

I hope, sir, that, in consequence of these favors and privileges, the company will derive new vigor, and will make the greatest efforts in order to correspond to the intentions of his Majesty, and exclude the English from those parts.

The house of Todd is also approved of by the King, who has added to all these favors that of the reduction of the duties from fifteen to six per cent. for all the colony.

We will see if Leglise gets the prize of \$3,000.

I have the honor to be, with the most perfect consideration, sir, your very humble and obedient servant,

LE BARON DE CARONDELET.

MONS. CLAMORGAN.

The above letter, No. 5, is truly translated from record-book D, page 316.

JULIUS DE MUN, T. B. C.

No. 6.

NEW ORLEANS, *October 26, 1796.*

In a royal order, under date of 11th of June of this year, the most excellent Señor Don Diego de Gardoqui, Secretary of State, and of the Universal Despacho, &c., among other things, tells me the following:

"In the council of state held on the 27th of last month, extracts of your lordship's last letters, up to the 10th of February, were laid before the King, together with the topographical plat of the rivers Mississippi and Missouri, on which are demonstrated the progresses of the Spanish company of discoveries to the westward of this last river, established on the 12th of May, 1794, as also the encroachments of the English companies upon the Spanish possessions. His Majesty being well informed of all the occurrences in that province, and of the means which your lordship has proposed, with the advice of the intendant and of the English merchant, Don Andrew Todd, of Michilimackinac, his Majesty has condescended to grant, with the unanimous accordance of the said council, the following points and favors:

"1st. The approval of the Spanish company formed in 1794, for the purpose of making discoveries to the westward of the river Missouri, under the instructions and regulations with which your lordship has permitted and granted to said company the exclusive privilege of the trade with all the nations of Indians on the said Missouri, who inhabit beyond the nation of Poncas, offering a reward of \$3,000 to the first who reaches the South Sea.

"2d. The permission that the company may arm at its own expense, and maintain armed, in the forts which said company has or may have hereafter, the one hundred men who are considered necessary; the whole to be under your lordship's orders, for the purpose indicated, the accomplishment of which your lordship shall have to watch with the greatest care.

"3d. That all the duties on imports and exports shall be reduced, for the present, to six per cent., as your lordship and the intendant have proposed, both taking care, with the greatest exactness possible, to observe and lay before his Majesty, at the end of the first year, the results which are expected from so munificent a disposition.

"Finally, that your lordship give to understand, to all, the magnitude of these concessions, and the immense benefits which the sovereign munificence has condescended to accumulate in the treaty of amity, limits and navigation—benefits which are of reciprocal utility to his beloved subjects, to the United States, and to the Indian nations allied and friendly to the two contracting parties; and that your lordship shall so order, that all the important objects which are expected from these dispositions shall be duly executed. All which I do communicate to your lordship, by order of his Majesty, for your intelligence and for their execution."

I forward the same to you for your satisfaction and government.
May God have you in his keeping many years.

EL BARÓN DE CARONDELET.

Señor DON SANTIAGO CLAMORGAN.

No. 7.

NEW ORLEANS, November 5, 1796.

Under date of the 3d instant, the intendant of these provinces writes to me what follows: "The meaning which I give to the article in the royal order of the 11th June of this year, upon which Don Santiago Clamorgan, director of the Spanish company of discoveries to the westward of the Missouri, has founded the demand which your lordship has been pleased to enclose in your official note of 31st ultimo, is, that the cost of arming, and the maintenance of the one hundred men, whom the company wants for the forts it has or may have hereafter, must be on its own account; and in this opinion, besides the literal interpretation of said article, to wit, *the permission that the company may arm at its own expense, and maintain armed, &c.*, I am moreover confirmed, 1st, by the circumstance of the permission of arming having ever been granted, for it appears to me that, had it been intended to be on the King's account, it would only have been necessary to notify that the one hundred men were to be furnished to the company; 2d, by said royal order not mentioning any sum, as it would have been indispensable in order to enable the royal treasury to make the disbursement; and, finally, by his Majesty not having appropriated funds for this no small expenditure, which cannot be supported by his royal coffers in this province, particularly in their present state of scarcity

and embarrassment, without being deprived of the means necessary to maintain the troops, the civil officers, the squadron of galleys, the works of Pensacola, and other extraordinary contingencies which occur every day. In consequence of all this; I find myself under the obligation to oppose the delivery of the said sum of ten thousand dollars, and to beg of your lordship, that, in case my reasons should not appear well founded, to consult his majesty on this matter, and in order that, by his royal declaration, I shall be sheltered from the responsibility which would result to me, were I to accede to the demand of Mr. Clamorgan on the terms he has established it."

I transmit the same to you for your knowledge and government.

May God have you in his keeping many years.

EL BARÓN DE CARONDELET.

Señor Don SANTIAGO CLAMORGAN.

The above two letters, Nos. 6 and 7, are truly translated from the originals.

JULIUS DE MUN, T. B. C.

No. 8.

NEW ORLEANS, *November 8, 1796.*

I see no objection to your levying in the country of Illinois the one hundred militiamen whom his Majesty has granted for the forts of the Missouri company, but I cannot answer for the reimbursement of the ten thousand dollars, because it depends on his Majesty's decision; although I am confident that when he sees my representation he will order it to be made, since I have solicited and supported the same.

It is all I have at present to answer to your official letter on this subject.

May God our Lord have you in his keeping many years.

EL BARON DE CARONDELET.

Señor Don SANTIAGO CLAMORGAN.

No. 9.

NEW ORLEANS, *May 24, 1797.*

SIR: I have received the letter you directed to me under date of the 15th of last April. Your claim is accompanied by the best reasons possible, and would not suffer any difficulties, were it not for the obligation I am under to take all the sureties necessary to the responsibility of my place, in order to justify, in the clearest manner, the extraordinary use made of the funds confided to me by his Majesty. Therefore, I have written on this subject to Mr. Dehault Delassus, and according to the explicit answer which I expect of him, I will order what shall appear to me most advisable.

I have the honor to be, sir, your very humble and very obedient servant,

JUAN VENTURA MORALES.

Mr. CLAMORGAN.

St. Louis, *July 3, 1797.*

Under date of April 5th of this current year, the Governor General, Baron de Carondelet, writes to me as follows :

"I have read your official note dated 11th of last March, in which you state the motives which have induced you to grant to Mr. Clamorgan the tract of land situated between the two rivers Charette and Cuivre, both emptying into the Mississippi; also, sixty arpens to the north and sixty arpens to the south of said rivers, which serve to determine the situation of said land, having the Mississippi in front. Two parallel lines are to be drawn, running in the interior of the country, until they reach at the distance of two hundred arpens beyond the foot of the first hills, conformably to the solicitation of the party interested. All which I do approve, Clamorgan having deserved this favor from the government."

I transmit the same to you for your knowledge and government.
May God have you in his keeping many years.

ZENON TRUDEAU.

Señor Don SANTIAGO CLAMORGAN.

St. Louis, *August 28, 1834.*

The three last letters, Nos. 8, 9, and 10, are truly translated from record-book D, pages 315 and 316.

JULIUS DE MUN, *T. B. C.*

The above is a true copy from Executive Document No. 16, 1st session 24th Congress, being copies printed by Congress of documents on file in the Clamorgan claim at St. Louis, from pages 401 to 409, inclusive.

B.

No.	Name of original claimant.	Arpens.	Nature and date of claim.	By whom granted.	By whom surveyed, date and situation.
152	James Clamorgan.	Not ascertained.	Concession, 3d March, 1797.	Zenon Trudeau.	On Cuivre and Dardenne, on the Mississippi.

Evidence with reference to Minutes and Records.

November 14, 1811. Board met—present John B. C. Lucas, Clement B. Prenrose, and Frederick Bates, commissioners.

Jacques Clamorgan, claiming 500,000 arpens of land, situate on rivers Mississippi, Dardenne, and Cuivre, district of St. Charles, produces a concession from Zenon Trudeau, L. G., dated 3d March, 1897 ;

also four letters to claimant, from Zenon Trudeau, Juan Ventura Morales, and Baron de Carondelet.

It is the opinion of the board that this claim ought not to be confirmed.

Jacques Clamorgan, claiming 60 arpens front on Mississippi, Charette and Dardenne, back to the hills, about 200 arpens, district of St. Charles, produces same concession and papers as in the preceding claim.

It is the opinion of the board that this claim ought not to be confirmed.

Jacques Clamorgan, claiming 60 arpens of land, front on the Mississippi, commencing above the mouth of Cuivre, up the Mississippi, and back to the hills, produces same concession and papers as in the foregoing claim.

It is the opinion of the board that this claim ought not to be confirmed. (See Minutes, No. 5, page 417.)

June 21, 1833. The board met pursuant to adjournment—present A. G. Harrison and F. R. Conway, commissioners.

James Clamorgan, by his legal representatives, claiming a tract of land on the Cuivre and Dardenne, quantity not ascertained—see record-book D, page 314; Minutes, No. 5, page 417; Spanish record of concession No. 3, page 21, No. 13—produces in evidence six letters, purporting to be original letters from Baron de Carondelet to James Clamorgan; also a certificate of James Mackay, and one of Charles Sanguinette, both sworn to before a magistrate; also a paper purporting to be a translation from Spanish into French of a letter from Baron de Carondelet to Clamorgan, translated by M. P. Leduc, and certified by him to have been so translated from the original letter, in the proper handwriting of the said Carondelet; also a paper purporting to be a receipt from Risdon H. Price for two original letters from Baron de Carondelet to James Clamorgan.

M. P. Leduc, duly sworn, says that the signatures to the six above letters are in the proper hand-writing of Baron de Carondelet, and that the translation here above produced is a faithful translation made by him from the original letter, written in Spanish, in the proper hand-writing of said Baron de Carondelet.

L. E. Lawless, agent of claimants, being duly sworn, says that the two original letters described in the receipt were delivered by him to said R. H. Price on the day of the date of said receipt, signed by said Price. To the best of deponent's belief, the concession, as recorded, was at same date in the possession of said Price, and that said Price is at present out of this State. Deponent further thinks that said documents have remained in possession of said Price, and are now out of the reach of said claimants. Deponent further states, that said Price obtained said documents for the purpose of laying the same before Congress, in order to obtain the confirmation of said claim. (See Minutes, book No. 6, page 179.)

June 29, 1833. The board met pursuant to adjournment—present Louis F. Linn and F. R. Conway, commissioners.

In the case of James Clamorgan, claiming lands on the Cuivre and Dardenne, (see page 179, No. 6,) the following testimony was taken:

Paschal Cerre, being duly sworn, deposes and says, that he was well acquainted with Charles Sanguinette, senior, who died some 12 or 15 years ago; that he was a man of probity, and in every way to be relied on; likewise he was a man of considerable property. The deponent further states, that he was acquainted with James Mackay, and that he was a man of respectability and property; that about forty years since, Mackay made a voyage of discovery and trading up the Missouri river; deponent knows the outfit was made at Clamorgan's house, and believes that Mackay was concerned and interested with Clamorgan in the enterprise.

Jesse Richardson, being duly sworn, says that he is fifty-seven years of age; that he has lived in the now State of Missouri, and in that vicinity, since 1799. This deponent says he knew James Clamorgan, deceased, and always understood, among the old inhabitants of the country, that the said Clamorgan had been in the employment of the Spanish government, and that the Spanish government was largely indebted to said Clamorgan, and that by way of remunerating said Clamorgan for his services, and compensating him for what the government owed him, large grants of land were made to said Clamorgan, particularly a large tract lying on the Mississippi, and on the rivers Dardenne and Cuivre. This tract was looked upon by the old inhabitants under the Spanish government as said Clamorgan's property. Deponent says that he knew James Mackay; he was a man of probity, and of high standing under the Spanish government. Charles Sanguinette, deceased, was a man of good reputation, and this affiant believes that the statements of said Mackay and Sanguinette are entitled to full credit—any statements they made in relation to this claim or on any other subjects.

Question by commissioners. Do you know the quantity and boundary of said tract?

Answer. I do not know the boundaries of said tract; I understood it was very large, embracing a great portion of the lands lying in the forks of the Missouri and Mississippi. This affiant has always heard the people expressing their fears that this claim would be confirmed and deprive those settled on it of their possessions. This affiant understood the land was about 500,000 arpens; that it lies on the Mississippi, extending from above the mouth of Cuivre to below the mouth of Dardenne, and back for quantity.

Question by commissioners. Did you ever hear this claim spoken of as fraudulent?

Answer. Never; but, on the contrary, I always understood that it was made to Clamorgan to pay him what the Spanish government owed him, as a reward for his services. I never heard any person who was interested against this claim pretend that it was fraudulent, or any person whatever.

Question by commissioners. Have you any interest in this claim?

Answer. No; I have feared that it would interfere with a claim I have, not confirmed; but, upon inquiry, I believe there is no danger. (See Minutes, No. 6, page 205.)

July 16, 1833. The board met pursuant to adjournment—present L. F. Linn and F. R. Conway, commissioners.

In the case of James Clamorgan, claiming land on Cuivre and Dardenne. (See page 179 of this book, No. 6.)

Jean Elie Tholozan being duly sworn, says, that he believes it was about the year 1816 that he gave to Risdon H. Price the concession and all the papers he had in his possession relating to this claim, in order to have said claim presented to Congress for confirmation; that he has heard that said Price is now out of this State, and does not know where these papers are, and neither to whom to apply for them. (See No. 6, page 234.)

September 26, 1835. The board met pursuant to adjournment—present F. R. Conway, J. H. Relfe, and F. H. Martin, commissioners.

In the case of James Clamorgan, claiming land on Dardenne and Cuivre. (See book No. 6, pages 179 and 234.)

The board are unanimously of opinion that this claim ought not to be confirmed, believing it to have been disregarded by both Trudeau, the lieutenant governor, who made the grant, and by his successor, Delasus. For a full opinion and notice of interferences, see report of the board to Commissioner of the General Land Office. (See book No. 7, page 249.)

JAMES H. RELFE.

F. R. CONWAY.

F. H. MARTIN.

The above are the minutes of the several boards of commissioners upon the Clamorgan claim, copied from Executive Document No. 16, 1st session 24th Congress, from pages 419 to 421, inclusive, as reported and published by Congress.